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EXAMINER

GELLNER, JEFFREY L

ART UNIT PAPER NUMBER

3643

DATE MAILED: 04/27/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/918,567

Applicant(s)

CHUNG, HWA SUK

Examiner

Jeffrey L. Gellner

Art Unit

3643

*ML*

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 25 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-3 is/are pending in the application.
- 4a) Of the above claim(s) 2 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 2 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☒ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Election/Restrictions***

Applicant's election of Species I - Figs. 1 & 2 - in Paper No. 10 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)). Claims 1 and 3 are considered generic to the two species. Claim 2 is withdrawn from examination because it is drawn to Species II, the unelected species.

### ***Claim Objections***

Claim 1 is objected to because of the following informality:

In claim 1, lines 12 and 13, the meaning is not clear of the text - "the water room having a height substantially equal to an opening level of the penetration hole and an upper surface of the water room."

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. §102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 3 are rejected under 35 U.S.C. §102(b) as being anticipated by Werner (US 2,651,884).

As to Claim 1, Warner discloses a flower pot (Fig. 3) having a ventilation function comprising an upper clay room (40 of Fig. 3; col. 2 line 21) for supporting soil for a plant; and, a lower water room (41 of Fig. 3; col. 2 line 21) below the upper clay room (Fig. 3) for holding water for the plant; wherein, the upper clay room and the lower clay room are separated by a partition wall (44 of Fig. 3) having a single center portion (45 of Fig. 3), wherein the single center portion of the partition wall comprises a water absorbing portion (“porous ceramic material” of col. 3 line 75) extending downward (see Fig. 3) to the water room while communicating with the clay room wherein the water absorbing portion comprises a plurality of porous apertures (“porous ceramic material” of col. 3 line 75) extending throughout the single portion, wherein an upper portion of the water room comprises at least one penetration hole (aperture around 55 of Fig. 3) for at least providing water or ventilation, thereby providing an air inflow area between the clay room (Fig. 3) and the water room having a height substantially equal to an opening level of the penetration hole (Fig. 3) and an upper surface of the water room (Fig. 3).

As to Claim 3, Werner further discloses a protrusion body (55 of Fig. 3) formed on the outside surface of the flowerpot.

### ***Claim Rejections - 35 USC §103***

The following is a quotation of 35 U.S.C. §103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 and 3 are rejected under 35 U.S.C. §103(a) as being unpatentable over Andrews (US 681,672) in view of Lonitz (US 661,411).

As to Claim 1, Andrews discloses a flower pot (Figs. 1-4) having a ventilation function comprising an upper clay room (region around leadline of 1 in Fig. 1; "earthenware" of col. 1 line 28) for supporting soil for a plant; and, a lower water room (generally region below leadline of 2 in Fig. 1; "earthenware" of col. 1 line 28) below the upper clay room (Fig. 1) for holding water for the plant; wherein, the upper clay room and the lower clay room are separated by a partition wall (3 of Figs. 1 and 2) having a single center portion (6 of Figs. 1 and 2), wherein the single center portion of the partition wall comprises a water absorbing portion (col. 2 lines 47-51) extending downward (see Fig. 1) to the water room while communicating with the clay room wherein the water absorbing portion comprises a plurality of porous apertures (shown in Figs. 1 and 2) extending throughout the single portion. Not disclosed is an upper portion of the water room comprises at least one penetration hole for at least providing water or ventilation, thereby providing an air inflow area between the clay room and the water room having a height substantially equal to an opening level of the penetration hole and an upper surface of the water room. Lonitz, however, discloses an upper portion of the water room comprises at least one penetration hole (h of Fig. 1) for at least providing water or ventilation, thereby providing an air inflow area between the clay room and the water room having a height substantially equal to an opening level of the penetration hole and an upper surface of the water room. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the

flowerpot of Andrews by adding a penetration hole as disclosed by Lonitz so as to have overflow spouts (see Lonitz at col. 1 lines 40-42) so as direct any liquid that spills when watering to control messes and to place the penetration hole at any height so as to meet consumer needs.

As to Claim 3, Andrews as disclosed by Lonitz further discloses a protrusion body (shown at h in Fig. 1 of Lonitz).

### ***Response to Arguments***

Any previous arguments by Applicant with respect to claims 1 and 3 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Tracey and Lagnier disclose in the prior art various flower pots with single water absorbing portions.

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Jeffrey L. Gellner whose phone number is 703.305.0053. The Examiner can normally be reached Monday through Thursday from 8:30 am to 4:00 pm. The Examiner can also be reached on alternate Fridays.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's Supervisor, Peter Poon, can be reached at 703.308.2574. The official fax telephone number for the Technology Center where this application or proceeding is assigned is 703.872.9306.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703.308.1113.

Jeffrey L. Gellner